

CHAPTER XXI. ✓

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in
warrant
cases.

1[251. In the trial of warrant cases by Magistrates, the Magistrate shall,—

(a) in any case instituted on a police report, follow the procedure specified in section 251A ; and

(b) in any other case, follow the procedure specified in the other provisions of this Chapter.

Procedure to
be adopted
in cases
instituted on
police report.

251A. (1) When, in any case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.

(2) If, upon consideration of all the documents referred to in section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

(3) If, upon such documents being considered, such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(4) The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried.

(5) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

(6) If the accused refuses to plead, or does not plead, or claims to be tried, the Magistrate shall fix a date for the examination of witnesses.

(7) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any witness for further cross-examination.

¹ Ss 251 and 251A were substituted by Act 26 of 1955, s. 34, for the original s. 251.

(8) The accused shall then be called upon, to enter upon his defence and produce his evidence ; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(9) If the accused after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(10) The Magistrate may, before summoning any witness on such application under sub-section (9), require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in court.

(11) If, in any case under this section in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(12) Where in any case under this section, the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon according to law.

(13) In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under sub-section (5) or sub-section (12), take evidence in respect of the alleged previous conviction, and shall record a finding thereon.]

252. (1) ¹[In any case instituted otherwise than on a police report, when the accused appears] or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution :

²[Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.]

(2) The Magistrate shall ascertain, from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

¹ Substituted by Act 26 of 1925, s. 35, for the original portion.

² Inserted by Act 18 of 1923, s. 70.

Discharge
of accused.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Charge to be
framed when
offence
appears
proved.

254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

Plea.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Procedure
in case of
previous
convictions.

¹[**255A.** In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (2), or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.]

Defence.

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state, ²[at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith], whether he wishes to cross-examine any, and; if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

Process for
compelling
production
of evidence
at instance
of accused.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers

¹ Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 71.

² Inserted by s. 72, *ibid*.

that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

258. (1) If in any case under this Chapter in which a charge has been framed **Acquittal.** the Magistrate finds the accused not guilty, he shall record an order of acquittal.

¶(2) Where in any case under this Chapter the Magistrate does not proceed **Conviction.** in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.]

259. When the proceedings have been instituted upon complaint, and upon **Absence of** any day fixed for the hearing of the case the complainant is absent, and the offence **complainant.** may be lawfully compounded, ²[or is not a cognizable offence,] the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

260. (1) Notwithstanding ^{Power to try} anything contained in this ^{summarily.} Code,—

(a) the District Magistrate,

(b) any Magistrate of the first class specially empowered in this behalf by the State Government, and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class

260. (1) Notwithstanding ^{Power to try} anything contained in this ^{summarily.} Code—

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(b) any Magistrate of the first class specially empowered in this behalf by the ⁴[⁵State] Government] ⁶[in consultation with the High Court,] and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class

¹ Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 73, for original sub-sec. (2).

² Inserted by s. 74, *ibid.*

³ The clause "(a) The District Magistrate," was deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

⁴ Substituted by the A. O. 1937 for "L. G."

⁵ Substituted by the A. O. 1950 for "Provincial".

⁶ Inserted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.